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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/597,406	09/06/2006	Sabrina Higgins	102792-601 (11380P1 US)	1533

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EXAMINER

MCKANE, ELIZABETH L

ART UNIT	PAPER NUMBER
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1797

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05/28/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/597,406	Applicant(s) HIGGINS ET AL.	
	Examiner ELIZABETH L. MCKANE	Art Unit 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>07242006, 08232006, 10112006</u> . | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 is indefinite as it appears to attempt to claim a process without setting forth any steps involved in the process. In fact, all the limitations of the claim recite merely the structure of the apparatus.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-7 and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over McKechnie et al. (GB 2363074) in view of Roumpos et al. (US 2003/0007887).

With respect to claims 1, 6, 7, and 10-12, McKechnie et al. teaches a method of deactivating Der-p and Der-f allergens. The method of McKechnie et al. includes dispersing a volatile oil, such as a terpene hydrocarbon, into a space to be treated. The oil may be volatilized using heat. See Abstract. McKechnie et al. is silent as to the apparatus used to heat the oil.

Roumpos et al. discloses an aromatic substance heating device wherein the device may be used to heat a volatile oil (paragraph [0060]). The heating element **14** can include a hotplate **15**. Although Roumpos et al. teaches that the upwardly open vessel **16** is preferably integral with the hotplate, it is certainly within the purview of one in the art to use a separate container, as no invention would have been required and the results of doing so would have been readily apparent.

It would have been obvious to one of ordinary skill in the art at the time of the invention to employ the apparatus of Roumpos et al. to volatilize the oil of McKechnie et al., as Roumpos et al. discloses that the device is suitable for heating and volatilizing oils.

As to claims 2-4, it would have been obvious to optimize the temperature to which the hotplate is heated based upon the particular oil being volatilized. Such is readily and obviously optimized by one of ordinary skill in the art.

With respect to claim 5, McKechnie et al. discloses that when the volatile oil is dispersed in a candle, the candle may be burnt for up to 10 hours or more. See page 6, lines 9-17. Thus, it would have been obvious to one of ordinary skill in the art to optimize the time during which the oil is heated and dispersed in order to achieve the desired level of treatment.

5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over McKechnie et al. and Roumpos et al. as applied to claim 1 above, and further in view of Jacobs (WO 97/10475).

McKechnie et al. with Roumpos et al. fails to teach the volatilization of β -pinene. Jacobs, however, teaches the volatilization of pinenes for air treatment, particularly for treatment of dust mites. See page 7, lines 1-25. Thus, it would have been obvious to add β -pinene to the terpene hydrocarbon of McKechnie et al. in order to treat both the dust mite allergens and the dust mites themselves.

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over McKechnie et al. and Roumpos et al. as applied to claim 1 above, and further in view of Pullen (US 6,500,445).

McKechnie et al. with Roumpos et al. fails to teach the volatilization of orange oil. Pullen discloses controlling dust mites with a terpene oil, such as preferably orange oil. See col.3, lines 36-45. It would have been obvious to add orange oil to the terpene hydrocarbon of McKechnie et al. in order to treat both the dust mite allergens and the dust mites themselves.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELIZABETH L. MCKANE whose telephone number is (571)272-1275. The examiner can normally be reached on Mon-Fri; 5:30 a.m. - 2:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Elizabeth L McKane/
Primary Examiner, Art Unit 1797

elm
26 May 2008